

November 28, 2012

Alan J. Lenczner, Q.C.
Direct line: 416-865-3090
Direct fax: 416-865-2844
Email: alenczner@litigate.com

VIA E-MAIL

Regional Senior Justice Charles T. Hackland
Ottawa Courthouse
161 Elgin Street
Ottawa, ON
K2P 2K1

RE: Paul Magder v. Robert Ford
Court File No. CV-12-448487
Our File No.: 43227

Dear Regional Senior Justice Hackland:

An issue has arisen regarding paragraph 4 of the draft Judgment, enclosed herein. Mr. Ruby's draft, also enclosed, is virtually identical with our draft Judgment, with the exception of our paragraph 4, which he has deleted.

We are writing to you to request clarification of paragraph 60 of your Reasons for Decision. Uncertainty has arisen with respect to the last two sentences of that paragraph. Those sentences are:

I am, therefore, required by s. 10(1)(a) of the *MCIA* to declare the respondent's seat vacant. In view of the significant mitigating circumstances surrounding the respondent's actions, as set out in paragraph 48 of these reasons, I decline to impose any further disqualification from holding office beyond the current term.

In our respectful submission, having found that you were required by Section 10(1)(a) of the *MCIA* to declare the respondent's seat vacant, you then went on to address whether Section 10(1)(b) would be applied and whether you would exercise your discretion to apply any further disqualification under Section 10(1)(b). Section 10(1)(b) reads:

May disqualify the member or former member from being a member during a period thereafter of not more than seven years.⁸⁶

In our respectful submission, you determined in the last sentence of paragraph 60 that you declined to impose any further disqualification. You re-enforce that decision in paragraph 61 of your Decision, which reads:

[61] Accordingly, I declare the seat of the respondent, Robert Ford, on Toronto City Council, vacant.

It is the last three words of paragraph 60 "beyond the current term" that is causing uncertainty. We view those words as either being superfluous to your expressed intention or meaning that the current term for this respondent has ended, subject to a suspension of 14 days. To put it plainly, if City Council were to hold an election for mayor in 2013, we respectfully submit that the respondent could present himself as a candidate.

The matter of the stay of Your Honour's Decision pending appeal is before the Divisional Court on December 5, 2012. We would appreciate receiving clarification so that we may issue the Order by that time. Clarification is necessary before Your Honour becomes functus.

Yours very truly,



Alan J. Lenczner, Q.C.

AJL/klh

c. Clayton Ruby
Andrew Parley

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
)
JUSTICE REGIONAL SENIOR JUSTICE)
HACKLAND)

MONDAY THE 26TH
DAY OF NOVEMBER 2012

B E T W E E N:

(Court Seal)

PAUL MAGDER

Applicant

and

ROBERT FORD

Respondent

JUDGMENT

THIS APPLICATION was heard on September 5 and 6, 2012 at the court house, 393 University Avenue, Toronto, Ontario, M5G 1E6, and Reasons released on November 26, 2012.

ON READING the Application Records, Facta and Briefs of Authorities, on hearing the evidence and on hearing the submissions of the lawyers for the parties:

1. **THIS COURT DECLARES THAT** the respondent, Robert Ford, contravened s. 5 of the *Municipal Conflict of Interest Act* when he spoke and voted on a matter in which he had a pecuniary interest at the meeting of Toronto City Council on February 7, 2012.
2. **THIS COURT DECLARES THAT** the respondent's actions were not done by reason of inadvertence or a good faith error in judgment.

3. **THIS COURT ORDERS THAT** the seat of the respondent, Robert Ford, on Toronto City Council is vacant, to take effect 14 days from the release of the Reasons for Decision, dated November 26, 2012.

4. **THIS COURT ORDERS THAT** nothing in the Reasons for Decision, dated November 26, 2012, or this Judgment shall be taken to limit the ability of the Respondent, Robert Ford, to run for re-election at any time.

5. **THIS COURT ORDERS THAT** the Applicant provide written costs submissions within four weeks of the release of the Reasons for Decision, dated November 26, 2012, with the Respondent providing written submissions within four weeks of the Applicant's submissions. The Applicant will then have a further two weeks to reply.

THIS JUDGMENT BEARS INTEREST at the rate of percent per year commencing on _____.

Regional Senior Justice Hackland

PAUL MAGDER
Applicant

-and- ROBERT FORD
Respondent

Court File No. CV-12-448487

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

JUDGMENT

LENCZNER SLAGHT ROYCE
SMITH GRIFFIN LLP
Barristers
Suite 2600
130 Adelaide Street West
Toronto ON M5H 3P5

Alan J. Lenczner, Q.C. (11387E)

Tel: (416) 865-3090

Fax: (416) 865-2844

Email: alenczner@litigate.com

Andrew Parley (55635P)

Tel: (416) 865-3093

Fax: (416) 865-2873

Email: aparley@litigate.com

Lawyers for the Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.

)

MONDAY, THE 26th

)

REGIONAL SENIOR JUSTICE HACKLAND

)

DAY OF NOVEMBER, 2012

B E T W E E N:

PAUL MAGDER

Applicant

-and-

ROBERT FORD

Respondent

JUDGMENT

THIS APPLICATION was heard on September 5 and 6, 2012 at the Courthouse, 361 University Avenue, Toronto, Ontario, and Reasons for Decision released on November 26, 2012.

ON READING the Application Records, Facta and Briefs of Authorities, on hearing the evidence and on hearing the submissions of the lawyers for the parties:

1. THIS COURT DECLARES that the Respondent, Robert Ford, contravened s.5 of the *Municipal Conflict of Interest Act* when he spoke and voted on a matter in which he had a pecuniary interest at a meeting of Toronto City Council on February 7, 2012 and that his actions were not done by reason of advertence or a good faith error in judgment.

2. THIS COURT ORDERS AND DECLARES that the seat of the Respondent, Robert Ford, on Toronto City Council is vacant.

3. THIS COURT ORDERS AND DECLARES that the Order and Declaration in paragraph 2 is to take effect 14 days from the release of the Reasons for Decision, dated November 26, 2012.

4. THIS COURT ORDERS THAT the Applicant provide written costs submissions within four weeks of the release of the Reasons for Decision, dated November 26, 2012, with the Respondent providing written submissions within four weeks of the Applicant's submissions. The Applicant will have a further two weeks to reply.

Regional Senior Justice Hackland